

**SPEECH OF BERTRAM C. FREY,
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BEFORE THE LAKE MICHIGAN STATES SECTION OF THE AIR AND WASTE
MANAGEMENT ASSOCIATION
"U.S. EPA's INTERVENTION AND ROLE IN UST/LUST REGULATION"
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Good Afternoon. My name is Bertram C. Frey, Deputy Regional Counsel of the United States Environmental Protection Agency, Region 5. I am here to give you a brief outline of the relationship between U.S. EPA and Illinois in Leaking Underground Storage Tank ("LUST") and Underground Storage Tank ("UST") regulation as well as EPA's perspective on the Illinois Underground Storage Tank fund situation. Fundamentally, the UST program is a contamination prevention program, while LUST is an enforcement and clean up program.

The Leaking Underground Storage Tank program, which is both state and federal, addresses procedures and requirements that tank owners and operators need to follow if there is a release from an underground tank. LUST covers requirements for reporting a release, release response issues, and penalties and corrective action. U.S. EPA has entered into cooperative agreements with each state in Region 5 which sets out the responsibilities of both the states and U.S. EPA for their respective LUST programs.

In the past, Illinois has always had the lead in handling LUST enforcement. Over the past several years, however, Illinois' statutory authority was amended to place some limitations on Illinois EPA's ability to oversee corrective actions. So, U.S. EPA stepped up activity to help to ensure that

LUST releases are being adequately addressed. U.S. EPA has issued notices of violation and information requests. Recently, during the fall veto session, legislation was passed which amended the Illinois LUST statutory provisions to address the limitations placed on Illinois EPA's authority to oversee corrective actions. The Region is currently negotiating a new cooperative agreement with Illinois to return to a relationship where Illinois will have the lead in LUST enforcement with the federal government providing support in money and case assistance. Of course, there may still be situations that will be more appropriate for federal action.

Money from a federal gasoline tax funds the LUST program. This federal gasoline tax expired at the end of 1995 and has, at this time, not been re-authorized. Nevertheless, a considerable amount of money is still available from this gasoline tax. It is unclear at this time, however, how much of this money will be appropriated to the federal LUST program.

The Underground Storage Tank program, which is both state and federal, sets requirements for how owners and operators should manage their tanks. UST includes regulations for installation, operation, monitoring, maintenance, and closure of underground tanks. At present, the UST program is not delegated to Illinois or any Region 5 State. The Illinois Fire Marshal receives approximately \$162,500 a year from U.S. EPA, some of which is for the purpose of assisting the state in developing a state UST program. This money is also used for the maintenance of a notification data base which contains a listing of tank owners and operators. The state fire marshal usually handles day to day regulating and reporting requirements under UST. Again, since it is not a delegated program, the

ultimate responsibility for regulatory oversight for the UST program lies with U.S. EPA with respect to the federal requirements.

As part of UST, Illinois maintains a fund which was intended to provide coverage to owners and operators for meeting the federal financial responsibility requirements. The Illinois UST fund has historically had difficulty raising sufficient money to meet incoming claims. Region 5 EPA withdrew approval of the fund as an acceptable mechanism for meeting the federal financial responsibility requirements on July 21, 1995, because of its fiscal instability.

When U.S. EPA withdrew approval of the Illinois UST fund, there was a grace period of 30 days, provided for under federal regulations, to allow petroleum owners and operators time to find some other method of financial assurance for meeting the federal regulations. At the end of the grace period, most small to medium sized businesses found private insurance to be the best option. Public entities and larger businesses have had the ability to self-insure.

U.S. EPA hoped that Illinois would design a plan that provided enough money to handle all new claims as well as pay off back claims. Included in the Illinois fall veto session legislation were provisions which will provide additional funding for the state fund. On January 16, 1996, U.S. EPA received Illinois' new state funding plan for the Illinois UST fund. Forty CFR 280.101 states that "pending the determination by the Regional Administrator [to approve or disapprove a fund], the owner or operator... will be deemed to be in compliance with the federal regulation requirements..." Thus, as

soon as the state sent in a request for fund approval, the tank owners and operators were immediately relieved of the need to maintain an alternative form of financial assurance to meet federal requirements to the degree they are covered under the state fund because of the coverage now deemed afforded by the Illinois UST fund. So until and unless EPA determines otherwise, the Illinois UST fund is deemed to be an acceptable mechanism for meeting the federal rules to the degree it provides coverage to owners and operators.

According to the new Illinois UST fund plan, effective January 1, 1996, a drop fee for tanker trucks will be implemented. This fee, known as an environmental impact fee, will be charged to anyone receiving shipments of selected fuels, including petroleum. They will be charged at a rate of \$.60 per 7500 gallons of fuel received or the equivalent fraction of that amount. This should provide approximately \$35-\$50 million a year. The fund will also be supported by continuing a three-tenths of a cent per gallon tax on selected fuels provided in the Motor Fuel Tax Law. Two-thirds of the gasoline tax money will be used to pay off earlier bonds and is therefore not available to pay claims.

U.S. EPA is currently in the process of reviewing Illinois' UST fund plan. The Region may have issues that will need to be discussed with the state. The main issue that U.S. EPA will examine is whether the funding mechanism will both address the backlog of claims and also provide enough money to handle incoming claims without falling behind in payments again. Included in Illinois' fund application is a suggestion that the state may pursue additional bonds to address the backlog of claims. According to U.S. EPA guidance, U.S. EPA must ensure that "....the bond issue [will] be large enough to eliminate

the reimbursement backlog, repay the bonds, and allow for a cushion of revenue to meet claims associated with future UST releases." We are hopeful that we can resolve any matters with Illinois to allow an approved Illinois UST fund to stay in existence.

Thank you for this opportunity to speak. I would be happy to answer any questions at this time.